

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RICHARD THOMAS MORRIS,  
Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
Defendant.

Case No. 15-cv-02905-BAS(NLS)

**ORDER:**

- (1) **GRANTING MOTION TO  
PROCEED *IN FORMA*  
*PAUPERIS* (ECF No. 3); AND**
- (2) **REFERRING TO  
MAGISTRATE JUDGE FOR  
REPORT AND  
RECOMMENDATION**

On December 24, 2015, Plaintiff Richard Thomas Morris (“Plaintiff”) commenced this action against Defendant Carolyn W. Colvin, Acting Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c) seeking judicial review of the Commissioner’s decision to deny him Supplemental Security Income benefits. On the same day, he also filed a motion seeking leave to proceed *in forma pauperis* (“IFP”). (ECF No. 3 (“IFP Mot.”).) For the reasons outlined below, the Court **GRANTS** Plaintiff’s IFP motion.

The determination of indigency falls within the district court’s discretion. *Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*, 506 U.S. 194 (1993) (holding that “Section 1915 typically requires the reviewing

1 court to exercise its sound discretion in determining whether the affiant has satisfied  
 2 the statute's requirement of indigency.''). It is well-settled that a party need not be  
 3 completely destitute to proceed *in forma pauperis*. *Adkins v. E.I. DuPont de Nemours*  
 4 *& Co.*, 335 U.S. 331, 339-40 (1948). To satisfy the requirements of 28 U.S.C. §  
 5 1915(a), "an affidavit [of poverty] is sufficient which states that one cannot because  
 6 of his poverty pay or give security for costs...and still be able to provide himself and  
 7 dependents with the necessities of life." *Id.* at 339 (internal quotations omitted). At  
 8 the same time, however, "the same even-handed care must be employed to assure  
 9 that federal funds are not squandered to underwrite, at public expense,...the  
 10 remonstrances of a suitor who is financially able, in whole or in material part, to pull  
 11 his own oar." *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

12 District courts, therefore, tend to reject IFP applications where the applicant  
 13 can pay the filing fee with acceptable sacrifice to other expenses. *See e.g., Stehouwer*  
 14 *v. Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994), *vacated in part on other*  
 15 *grounds, Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995) (finding that a district  
 16 court did not abuse its discretion in requiring a partial fee payment from a prisoner  
 17 who had a \$14.61 monthly salary and who received \$110 per month from family).  
 18 Moreover, "[i]n *forma pauperis* status may be acquired and lost during the course of  
 19 litigation." *Wilson v. Dir. of Div. of Adult Insts.*, 2009 WL 311150, at \*2 (E.D. Cal.  
 20 Feb. 9, 2009) (citing *Stehouwer*, 841 F. Supp. at 321); *see also Allen v. Kelly*, 1995  
 21 WL 396860, at \*2 (N.D. Cal. June 29, 1995) (holding that a plaintiff who was initially  
 22 permitted to proceed *in forma pauperis* should be required to pay his \$120 filing fee  
 23 out of a \$900 settlement). In addition, the facts as to the affiant's poverty must be  
 24 stated "with some particularity, definiteness, and certainty." *United States v.*  
 25 *McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277  
 26 F.2d 723, 725 (9th Cir. 1960)).

27 Having read and considered Plaintiff's application, the Court finds that  
 28 Plaintiff meets the requirements in 28 U.S.C. § 1915 for IFP status. Plaintiff was last

1 employed in 2007 at Mass Audiology in Massachusetts, making \$12 per hour. (IFP  
 2 Mot. at ¶ 2.) He currently receives \$335 per month in General Assistance and \$194  
 3 per month in food stamps, and is on Section 8 housing assistance. (*Id.* at ¶ 3.) He  
 4 does not have a checking or savings account, and does not own any automobiles, real  
 5 estate, stocks, bonds, securities, or anything else of value. (*Id.* at ¶¶ 4-5.) His current  
 6 debts include \$230 in credit card debt. (*Id.* at ¶ 9.) His monthly expenses include  
 7 \$39 per month for cable and phone and \$25 per month for laundry. (*Id.*) Plaintiff  
 8 has no dependents. (*Id.* at ¶ 8.) Consequently, the Court finds that requiring Plaintiff  
 9 to pay the court filing fees would impair his ability to obtain the necessities of life.  
 10 *See Adkins*, 335 U.S. at 339.

11 In light of the foregoing, the Court **GRANTS** Plaintiff's application to proceed  
 12 IFP (ECF No. 3). However, if it appears at any time in the future that Plaintiff's  
 13 financial picture has improved for any reason, the Court will direct Plaintiff to pay  
 14 the filing fee to the Clerk of the Court. **This includes any recovery Plaintiff may**  
 15 **realize from this suit or others, and any assistance Plaintiff may receive from**  
 16 **family or the government.**

17 Additionally, the Court **REFERS** all matters arising in this case to United  
 18 States Magistrate Judge Nita L. Stormes for a Report & Recommendation in  
 19 accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(c)(1). If the parties  
 20 choose to file motions in this case, they shall contact Judge Stormes' chambers to  
 21 secure scheduling, filing, and hearing dates.

22 **IT IS SO ORDERED.**

23  
 24 **DATED: January 8, 2016**

  
**Hon. Cynthia Bashant**  
**United States District Judge**